

## ESTATE OF JAMES LARGO

IBIA 84-24

Decided April 12, 1984

Interlocutory appeal certified by Administrative Law Judge Patricia McDonald in  
IP GA 180G 83.

Interlocutory appeal decided; case remanded.

1. Indian Probate: Interlocutory Appeals

Administrative Law Judges (Indian Probate) have authority under 43 CFR 4.28 to certify interlocutory questions to the Board of Indian Appeals.

2. Indian Probate: Inheriting: Generally

It is manifest error to include in the chain of title to Indian trust land the name of an individual who was not alive to inherit.

### OPINION BY CHIEF ADMINISTRATIVE JUDGE PARRETTE

On April 9, 1984, the Board of Indian Appeals (Board) received an interlocutory question referred to it by Administrative Law Judge (Indian Probate) Patricia McDonald concerning the estates of Limbert Largo, unallotted Navajo C#33,898, and of James Largo, unallotted Navajo C#424,825. According to documentary evidence submitted by Judge McDonald, Limbert Largo died on

April 29, 1976, and a hearing to determine his heirs was held on April 22, 1980. By order in Indian Probate No. IP CA 207GX 76, Judge McDonald found that Limbert Largo's heirs were his eight children, including the above-named James Largo.

In 1983, Judge McDonald received the probate file of James Largo, which was assigned Indian Probate No. IP GA 180G 83. The file shows that James Largo was born on March 9, 1975, and died on March 13, 1975, at the age of 4 days. Thus, James Largo was not alive at the time of his father's death on April 29, 1976. Probate of the estate of James Largo has not been concluded.

[1] The Board has determined that Judge McDonald's referral of this interlocutory appeal in the Estate of James Largo is appropriate under the provisions of 43 CFR 4.28, which states:

There shall be no interlocutory appeal from a ruling of an administrative law judge unless permission is first obtained from an Appeals Board and an administrative law judge has certified the interlocutory ruling or abused his discretion in refusing a request to so certify. Permission will not be granted except upon a showing that the ruling complained of involves a controlling question of law and that an immediate appeal therefrom may materially advance the final decision. An interlocutory appeal shall not operate to suspend the hearing unless otherwise ordered by the Board.

Section 4.28, part of the general regulations in 43 CFR Part 4, Subpart B, augments the authority given to the Administrative Law Judges (Indian Probate) under 43 CFR 4.202. Although Indian probate judges do not make interlocutory "rulings," they may be faced with questions of an interlocutory nature. Such questions may, under appropriate circumstances, be referred to the Board.

[2] In this case, the interlocutory question is whether the Judge should enter an order in the Estate of James Largo that finds that his heirs are his brothers and sisters when all of James Largo's Indian trust land was originally inherited from his father, Limbert Largo, and when the record demonstrates that James Largo predeceased his father and so was not eligible to inherit from him. Although an order determining James Largo's heirs to be his brothers and sisters might yield the same result as if he had never inherited--i.e., all of Limbert Largo's Indian trust interests would thereby vest in his seven living children--to include the name of a deceased person as an heir in the chain of title to Indian trust land would be manifest error.

In order to prevent this manifest error, the May 12, 1980, order determining the heirs of Limbert Largo must be corrected. The Board has authority to correct such errors under 43 CFR 4.320. Judge McDonald is therefore directed to reopen the Estate of Limbert Largo for this purpose.

This case is remanded to Administrative Law Judge Patricia McDonald for further action consistent with this decision.

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Bernard V. Parrette  
Chief Administrative Judge

We concur:

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Jerry Muskrat  
Administrative Judge

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Anne Poindexter Lewis  
Administrative Judge